



**Army Contracting Agency**  
**Acquisition Instruction (AI)**

**August 2006**

# **PART 5101-FEDERAL ACQUISITION REGULATION SYSTEM**

## **SUBPART 5101.1-PURPOSE, AUTHORITY, ISSUANCE**

### **5101.101 Purpose.**

This Acquisition Instruction (AI) establishes general contracting procedures for the Army Contracting Agency (ACA). It is issued pursuant to Federal Acquisition Regulation (FAR) 1.301(a)(2) and provides internal agency guidance, including designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements. It contains procedures that are required by regulation to be established by the Head of the Contracting Agency (HCA); procedures that implement policies; and procedures necessary to ensure that certain practices are consistent throughout the ACA. Where extensive standard operating instructions or detailed procedures are required, this instruction may reference ACA policy. Army Contracting Agency guides and templates referred to in this instruction can be found in the on-line library at the following World Wide Web (WWW) address: <http://aca.saalt.army.mil/ACA/Community/index.htm>.

### **5101.102 Statement of Guiding Principles for the Federal Acquisition System**

#### **5101.102-4 Role of the Acquisition Team.**

(e) Each member of the ACA acquisition team is encouraged to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs.

## **SUBPART 5101.2-ADMINISTRATION**

### **5101.201 Maintenance of the FAR.**

#### **5101.201-2 FAR Secretariat.**

(a) The Director, Operations and Career Management Directorate, Army Contracting Agency (SFCA-CO), prepares and maintains the ACA AI. On-line maintenance of the ACA AI is the responsibility of the SFCA-CO.

(b) Principal Assistants Responsible for Contracting (PARCs) may provide local contracting instructions, when appropriate. Such instructions must be consistent with this AI, be kept to a minimum, and be provided to SFCA-CO when issued or updated.

(c) Acquisition letters or ACA policy memoranda may be issued from time to time to provide additional guidance or policy pending possible incorporation into the AI or other policy document. ACA policy memoranda will be issued under the signature of the HCA, with a four-character reference beginning with the letter "P" followed by three numeric characters (such as P001). Active and rescinded letters/memoranda will be maintained electronically at <http://aca.saalt.army.mil/ACA/Community/index.htm>.

## **SUBPART 5101.3-AGENCY ACQUISITION REGULATIONS**

### **5101.301 Policy.**

(c) Use the following procedures when creating clauses for repetitive use:

(1) Clauses that have a significant impact on the public require higher level approval in accordance with AFARS 5101.304(4)(A). Forward such clauses and justification for their use through the PARC to the SFCA-CO for review and approval. If HQ ACA determines there is a significant public impact, the clause must be published for public comment before it is approved for use.

(2) Clauses approved for repetitive use will be identified by title, source, a clause number, and date of approval. The information is part of the clause's title and must appear whenever the clause is cited within a contract or any other document.

(3) Nonstandard clauses that will be used on a repetitive basis and will not have a significant cost or administrative impact on contractors or offerors or will not have a significant effect outside the internal operating procedures of ACA, shall be reviewed by the Chief of the Contracting Office, local experts, legal counsel, and approved by the PARC. After it is cleared for use, forward a copy of each non-standard clause to SFCA-CO. The PARC may delegate authority to the Chief of the Contracting Office/Contracting Officer to approve and use non-standard clauses on a one-time basis. The contract file must document the rationale for use of such clauses.

### **5101.304 Agency Control and Compliance Procedures.**

(a)(1) SFCA-CO issues the ACA AI for the ACA Director under authority prescribed in AFARS 5101.304(1).

## **Subpart 5101.4 -- Deviations From the FAR**

### **5101.403 Individual Deviations.**

(1) Proposed deviations must be reviewed by legal counsel before they are approved by the PARC.

(2) A copy of all approved deviations must be provided to SFCA-CO when issued or updated.



## **Subpart 5101.5 -- Agency and Public Participation**

### **5101.501 -- Solicitation of Agency and Public Views.**

#### **5101.501-2 -- Opportunity for Public Comments.**

Contracting activities may not make significant revisions to standard clauses or create nonstandard clauses that impact the general public without publishing the clauses for public comment per FAR subpart 1.5. Forward all such clauses and supporting rationale for their use through SFCA-CO, who will publish the Federal Register notice.

## **Subpart 5101.6 -- Career Development, Contracting Authority, and Responsibilities**

### **5101.601—General**

#### **(5)(90) PARC Responsibilities**

(a) The HCA has delegated to the PARC certain HCA authorities specified in individual PARC appointment letters. Additional general delegations are identified in this supplement and other ACA policy memoranda.

(b) For all dollar thresholds established in the ACA AI, the value for threshold determination is the maximum potential amount of funds that could be obligated over the life of the action, including all contract options.

(c) The senior official of the contracting office shall forward all actions requiring PARC execution or approval. These actions will contain a copy of all reviews performed at that level, including the legal review, and the Contracting Officer's responses to review comments.

(d) Unless otherwise prescribed, the PARC will submit all contract actions requiring HCA or higher level approval through the ACA SFCA-CO for coordination by SFCA.

#### **(5)(91) Alternate PARC**

(a) The HCA can appoint an alternate PARC. When selecting the Alternate PARC, the HCA shall comply with the requirements of DODI 5000.58 governing selection of senior contracting officials.

(b) The HCA shall appoint in writing and specify any limitations on the authority to be exercised, other than limitations contained in applicable law or regulation.

(c) Generally, the Alternate PARC will have the same responsibilities as the PARC when authorized.

(d) The Alternate PARC will only execute responsibilities in the absence of the PARC.



(e) Termination of Alternate PARC appointment will be by letter. Termination may be for such reasons as reassignment, job termination, or unsatisfactory performance. No termination shall operate retroactively.

## **5101.602 Contracting Officers.**

### **5101.602-2 Responsibilities.**

#### **5101.602-90 Appointment of Ordering Officers.**

Authority to appoint ordering officers is delegated to Chiefs of Contracting Offices with the ability to redelegate this authority to a warranted Contracting Officer.

#### **5101.602-2(91) Contracting Officer's Representatives (CORs).**

(a) CORs must be appointed prior to award for all service contracts to ensure surveillance is adequately performed.

(b) The requiring activity normally nominates the COR. The nomination memorandum must include the nominee's qualifications.

(c) The Chief of the Contracting Office shall establish requirements for formal COR training at that location. The Contracting Officer is responsible to assure that any COR they appoint fully understands how to properly execute COR responsibilities. All COR nominees must complete a formal COR course prior to appointment, unless this requirement is waived in writing by the Chief of the Contracting Office.

(d) The Contracting Officer will provide a copy of the COR appointment memo to the COR and his/her supervisor. The COR's supervisor shall verify that the COR is properly executing his/her duties and consider their performance as COR as part of his/her overall job performance rating.

#### **5101-602-3 Ratification of Unauthorized Commitments**

##### **(b) Policy.**

(2)(90) *HCA approval*: All ratification actions over \$100,000 must be approved by the Director, ACA. Submit the request and supporting documentation through the PARC to SFCA-CO.

## **5101.603 -- Selection, Appointment, and Termination of Appointment.**

### **5101.603-1 General.**

(1)(iii)(90) *HCA*s.

(2) Authority to appoint Contracting Officers is delegated to the PARCs. Nomination for appointment shall contain sufficient information to document that the individual meets the requirements of the FAR, DFARS and AFARS regarding qualifications and shall comply with all procedures set out in ACA Policy Memorandum P001.

### **5101.603-2 Selection**

(4) (S-100). All Army overseas PARCs shall recognize and honor the information and levels presented for a contracting officer position by a warranted member of the Navy, (including Marine Corps) and Air Force assigned to them to support a contingency mission. When an Air Force or Navy candidate is identified for assignment, request a copy of any previously held warrant(s) with a suspense date before arrival in theater within 2 working days. In addition, request documentation of the candidate's highest certification level and highest college degree earned. A warrant that represents the level of expertise and experience demonstrated by these documents and supports mission requirements will be issued upon a candidate's arrival in theater, except as specified in paragraph (b).

(b) If the information requested is not received in the timeframe requested, or if there is a reason the PARC believes the same level of warrant as held previously is not appropriate, an immediate notice should be provided to the HCA, Director, ACA, with a copy to the Chief of Staff. If the discrepancy cannot be resolved at that level, DASA(P&P) will be notified before denying a reciprocal ~~sister~~ Service warrant. The HCA is also to be notified if the PARC believes additional training is required for a contingency contracting military officer of Department of Defense civilian.

### **5101.603-3 Appointment.**

(b) PARCs may be given authority by the Director of the Army Contracting Agency (ACA) on a case by case basis to use the SF 44 instead of the governmentwide purchase card. This authority will only be exercised when local conditions do not support use of the purchase card, e.g., when local merchants do not accept credit cards or when the local e-commerce infrastructure has been compromised. In that event, after ACA has granted authority, ordering officers may use the SF 44 within the limitations imposed on purchase cards by Defense Federal Acquisition Regulation Supplement (DFARS) 213.301 instead of the limitations imposed on SF 44 use at DFARS 213.306(a)(1).



## **5101.690-1 Management Control.**

(a) Use Appendix BB of the AFARS, "Management Control Evaluation Checklist" to conduct Review & Assessments (R&A) and document any supplementation. If PARCs or contracting offices believe additional items should be addressed on the management control and evaluation checklist or have developed additional checklists, their recommendations shall be forwarded to the ACA Resource Management Directorate (SFCA-RM) for approval. Chiefs of Contracting Offices shall provide yearly input into the Commander's Annual Statement of Assurance and highlight any material weaknesses reported during the fiscal year.

(b) Any proposed material weakness shall be immediately brought to the attention of the Director, ACA through the ACA Resource Management Directorate (ATTN: SFCA-RM) along with a recommended corrective action.

(c) Any performance agreement or standards for managers with management control responsibility shall include an explicit statement of said responsibility.

## **5101.91 Inspections, Reviews, and Audits (IRAs).**

Chiefs of Contracting Offices shall quarterly provide the ACA Review and Outreach Directorate (ATTN: SFCA-RA) information regarding upcoming external IRAs (e.g., those to be conducted by the AAA, DAIG, DoDIG, GAO) and their results. ACA HQ shall provide written comments for IRAs conducted by the AAA, DAIG, DoDIG and GAO. Chiefs of Contracting Offices shall cooperate with these agencies, and shall provide copies of written comments or responses to ACA HQ (SFCA-RA) unless otherwise directed.

The ACA Review and Assessment (ACA R&A) will be conducted quarterly with all submissions to the ACA Operations and Career Management Directorate (ATTN: SFCA-CO).

## **Part 5102 Definition of Words and Terms**

### **Subpart 5102.1 – Definitions**

*"ACA Contracting Command"* means the command subcomponents of the Army Contracting Agency that are outside the continental United States and are headed by a military Principal Assistant Responsible for Contracting. The commands are organized to provide installation level contracting support within a given geographic area. ACA Contracting Commands include Army Contracting Command, Europe; Army Contracting Command, Korea; and Army Contracting Command, Southwest Asia.

*"ACA Region"* means the subcomponents of the Army Contracting Agency that are headed by a civilian Principal Assistant Responsible for Contracting. The ACA Northern and Southern Regions are organized to support the Installation Management Agency (IMA) realignment. The Northern Region supports Northeast and Northwest IMA regions; the Southern Region supports the Southeast and Southwest IMA regions. The ACA The Americas supports requirements in Central and South America. The ACA Contracting Element Pacific Region supports the Pacific



IMA regions. Information Technology, E-Commerce and Commercial Contracting Center (ITEC4) is organized to support Army enterprise-wide buying capability for common use information technology and commercial items.

“*Acquisition letter*” means a notice of change to this Acquisition Instruction.

“*Chief of the Contracting Office*” means directors of contracting, chiefs or directors of regional contracting centers, centralized contracting offices, and ITEC4 division chiefs.

“*HCA*” means, *Head of the Contracting Activity*. For the Army Contracting Agency, the HCA is the Director, ACA, appointed by ASA(ALT).

“*Policy Memorandum*” means guidance issued by ACA Headquarters to ACA components.

“Contracting Officer's Representative” (COR) means any individual who is designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

## **Part 5103-- Improper Business Practices and Personal Conflicts of Interest [Reserved]**

### **Part 5104 Administrative Matters**

#### **5104.1 Contract Execution.**

##### *(90)(a) Legal Reviews.*

(i) At a minimum, legal reviews will be conducted for any action requiring higher headquarters review, on proposed contract actions over \$300,000 at ACA contracting offices not designated as “centers,” and \$500,000 at regional contracting centers, except for administrative modifications. Contracting officers may also request legal reviews under the above thresholds on a case-by-case basis. A PARC may authorize higher thresholds for orders for supplies placed under existing contracts without solicitation of proposals or negotiation.

(ii) Other actions requiring legal review include, but are not limited to: settlements, novation and change-of-name agreements, protests, justification and approval documents (J&As) (see AFARS 5106.303), use of local clauses and provisions, acquisition plans, acquisition strategies, Congressional inquiries, determinations of nonresponsiveness, suspension and debarment actions, terminations, disputed claims, late bid determinations, mistakes in bids/proposals, final decisions, appeals, actions with significant potential for environmental impact, proposed deviations from generally accepted contracting practices (including ACA policy and guidance), and novel/experimental contracting approaches.

(iii) Legal counsel normally is not available at the contracting activity. When this is the case, the Contracting Officer will request support from the installation Office of the

Staff Judge Advocate, and simultaneously notify the ACA Office of the Command Counsel (through the Regional Counsel), of the request. The ACA Regional Counsel and Chief Counsel should be advised of substantial shortfalls in legal support to DOCs as they occur, so they can participate in the problem-solving process, as required.

(b) *Other Reviews.* Where appropriate, include technical expert(s) in the requirements area, to include Quality Assurance specialists, Small and Disadvantaged Business Utilization Specialists, and Competition Advocates in the review.

## **Part 5105 Publicizing Contract Actions**

### **Subpart 5105.00 Scope of Part**

**5105.003 - Governmentwide point of entry.** Post notices to the Governmentwide Point of Entry (GPE) through the Army Single Face to Industry. The official date of publication or notice is when the item appears on FedBizOpps, as that is the GPE.

### **Subpart 5105.3 -- Synopses of Contract Awards**

**5105.303(a)(ii)(A)(i) Announcement of Contract Awards.** Use the Congressional Notification format in Part 5153.9010. Make the award as late in the day as possible, but no earlier than 4 p.m. Eastern Time (Washington, DC local time) on the scheduled award date, unless there are compelling reasons for awarding earlier. Provide an electronic copy to SFCA-CO.

### **Subpart 5105.4 -- Release of Information**

#### **5105.403. Requests from Members of Congress**

(a) A congressional inquiry relating to contract issues received by the ACA or PARCs will be sent to the appropriate office for preparation of the draft response. When the inquiry is received directly by the office, forward a copy through the PARC to SFCA-CO immediately for tasking. If it is determined that responsiveness “would result in disclosure of classified matter, business confidential information, or information prejudicial to competitive acquisition,” the Contracting Officer shall, within three working days after receipt of the inquiry, prepare the proposed reply, obtain legal concurrence, and forward both, with full documentation, to the ACA, SFCA-CO for transmittal to the Agency Head, and send an interim reply to the Army’s Office of Chief of Legislative Liaison addressed to the Member of Congress, indicating the action being taken.

(b) Normally, the inquiry will be completed within five working days of date of receipt to final dispatch. Use the fastest possible means to reply to the congressional inquiry. AR 1-20, Congressional Inquiries, provides additional guidance.

#### **5105.404 -- Release of Long-Range Acquisition Estimates.**



#### **5105.404-1 Release Procedures.**

(a) *Application.* Chiefs of Contracting Offices are authorized to release estimates, without the power of redelegation.

#### **Subpart 5105.5 Paid Advertisements**

##### **5105.502 – Authority**

(a) *Newspapers.* Chiefs of Contracting Offices are authorized to approve the purchase of paid advertisements in newspapers.

### **Part 5106 Competition Requirements**

#### **Subpart 5106.3 -- Other Than Full and Open Competition**

##### **5106.302 -- Circumstances Permitting Other Than Full and Open Competition**

##### **5106.302-5 -- Authorized or Required by Statute.**

(b) *Application.*

(2) Do not use this authority to place sole source awards with non profit agencies or workshops under the JWOD program unless the item or service is already on the procurement list.

##### **5106.304 -- Approval of the Justification.**

(a) If any change in the contract (e.g., dollar value, strategy, scope) exceeds the basis for the original justification approval authority, a new justification and approval must be obtained from the appropriate approval authority prior to award of any change order or other contract modification.

##### **(90) Approval Thresholds**

(a) Obtain verbal approval from the approving authority (see the table in paragraph (a)(90)(b) of this subsection) before the release of any solicitation with an estimated price at or under \$75 million that cites unusual and compelling urgency as the authority for other than full and open competition. Follow-up the initial approval with a written J&A. It must be submitted within ten working days after award.



(b) *Table of Approval Thresholds*

	<b>Review</b>	<b>Approval</b>
<b>&lt; \$500K</b>	Legal	Contracting Officer
<b>Over \$500K to \$10M</b>	Legal, SADBU, Chief of Contracting Office	Special Competition Advocate
<b>Over \$10M to \$75M</b>	Legal, SADBU, Special Competition Advocate, PARC	HCA or Designee
<b>Over \$75M</b>	Legal, SADBU, Special Competition Advocate, PARC, HCA or designee.	Army Acquisition Executive (AAE)

(c) If a contract exceeding \$75 million must be awarded prior to final approval of the J&A, the J&A shall be submitted for approval through the PARC to arrive at the ACA, SFCA-CO) not later than 20 working days after contract award so that the document can be reviewed and forwarded to the AAE. When the approving authority grants verbal or electronic approval, the name and title of the approving authority and date of the approval shall be included in paragraph two of the J&A.

**(91) Other Approvals.**

(a) Technical and requirements personnel must certify on the J&A document any data they provide to support their recommendation for other than full and open competition. The technical certification should be made by an individual knowledgeable about and responsible for the technical (or functional) aspects of the procurement.

(b) Obtain legal review for all J&As over \$100,000.

(c) The PARC must review and concur in J&As that require HCA or higher authority involvement. Requests for approval must include the concurrence of the –

- (1) Contracting Officer;
- (2) Local (if one has been appointed) and Special Competition Advocate;
- (3) Legal counsel; and
- (4) Appropriate technical and requirements individuals authorized to review and certify the J&A.

**Subpart 5106.5 -- Competition Advocates**

## **5106.501 – Requirement**

(90) **Appointment of Special Competition Advocate.** The HCA will designate Special Competition Advocate(s) who are responsible for approving actions up to \$10 million for individual regions and commands. PARCs shall submit nominations to the SFCA-CO. The nominee must be a senior official who is independent of the Contracting Officer. Electronic transmittal of the nomination is recommended.

## **5106.502 Duties and Responsibilities.**

(90) Submit the reports required by AFARS 5106.502(b)(2) to the ACA Special Competition Advocate through the SFCA-CO by October 30 of each year.

# **Part 5107 Acquisition Planning**

## **Subpart 5107.1 -- Acquisition Plans**

### **5107.104 General Procedures**

(90)(a) As part of acquisition planning, PARCs must ensure effective migration of actions over \$500,000 to regional or ITEC4 centers.

(b) For actions that are common across ACA, the ACA Director of SFCA-CO will determine if master contracts, solicitations, or performance work statements are appropriate to provide the most effective and efficient business solutions ACA-wide. In support of this evaluation, the PARCs must provide to the Director SFCA-CO a list of all actions over \$500,000 that are slated for migration to centers for the coming four fiscal years. The list must indicate the projected migration date and the type of supply or service required. Based on the listing, PARCs or the ACA Director of SFCA-CO may designate individual actions or groups of actions for review as possible consolidation efforts.

(c) The PARC or ACA Director will notify the local contracting office of its intent to centrally procure an action or to perform specific reviews on a designated action within five business days after receipt of a description of the projected instant contracting action. This information must be provided to the central procurement point of contact listed on the PARC or ACA HQ website. If the PARC or ACA Director does not determine within five working days that the supply or service must be centrally procured, the local contracting office may proceed with the acquisition.

(91) **Monthly Contract Status Report.** Include the status of extremely high dollar, high risk, high visibility or critical contract actions in a monthly summary of PARC actions that is due to the ACA Director by the 7<sup>th</sup> of each month.

### **5107.170 -- Consolidation of contract requirements.**



5107.170-3(S-90) Policy and procedures.

a. (1) For supplies over \$500M, submit request through SFCA-CO for processing and approval by DASA (P&P). For services over \$500M, submit request through SFCA-CO along with the acquisition strategy required by AFARS 5137.5

b. (1) For supplies over \$100M and less than \$500M, submit request through SFCA-CO. For services over \$100M and less than \$500M, submit request through SFCA-CO along with the acquisition strategy required by AFARS 5137.5.

## **Part 5108 Required Sources of Supplies and Services**

### **5108.002 Priorities for Use of Government Supply Sources.**

(a) Contracting officers must verify that the requirement is not suitable for Javits-Wagner-O'Day (JWOD) performance before proceeding with a Federal Supply Schedule purchase or a commercial source purchase, including those made under the 8(a) program or via small business set-aside. This policy applies under all acquisition methods, including simplified, sealed bid and negotiated procedures. It also applies to all types of contract vehicles awarded. If the acquisition is not suitable for JWOD performance, document the file with the rationale. The instructions for offering a requirement as a possible addition to the JWOD procurement list are in the Code of Federal Regulations 51-2 at [http://www.jwod.gov/jwod/library/JWOD\\_Regulations\\_51\\_2.htm](http://www.jwod.gov/jwod/library/JWOD_Regulations_51_2.htm).

### **5108.7 Acquisition from Nonprofit Agencies Employing People who are Blind or Severely Disabled.**

#### **5108.704 Purchase priorities.**

(a) JWOD authority only may be used when the item or service has already been added to the Procurement List.

(90) *Supplies.* Where geographic areas, quantities, percentages or specific supply locations for a commodity are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the commodity indicated by the Procurement List.

(91) *Services.* When the location or geographic area(s) are listed on the Procurement List, only the service for the location or geographic area(s) listed must be procured from the nonprofit agency, except as provided in replacement services. If the service is on the Procurement List to meet the needs of a government entity at a specific location and the entity moves to another location, the service at the new location is automatically considered to be on the Procurement List. The incumbent qualified nonprofit agency will perform the service at the new location, unless another contractor is already providing the service at that location. If another contractor is providing the service at the new location, the service will not be placed on the Procurement List unless the Committee adds it. If another government entity moves into the old location, the service at that location will remain on the Procurement List to meet the needs of the new government entity. Where the Procurement List indicates no location or geographic



area, it is mandatory that the total government requirement for that service is procured from a nonprofit agency.

## **Part 5109 Contractor Qualifications**

### **5109.4 Debarment, Suspension, and Ineligibility**

#### **5109.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs**

5109.404 (c)(5) Check the Excluded Parties List System at <http://epls.gov> before soliciting an offer from, awarding a contract to, or consenting to subcontract with any potential contractor.

## **Part 5110 Market Research [Reserved]**

## **Part 5111 Describing Agency Needs [Reserved]**

## **Part 5112 Acquisition of Commercial Items [Reserved]**

## **Part 5113 Simplified Acquisition Procedures [Reserved]**

## **Part 5114 Sealed Bidding [Reserved]**

## **Part 5115 Contracting By Negotiation**

### **5115.201 -- Exchanges With Industry Before Receipt of Proposals.**

(c)(6) To permit industry the maximum opportunity to participate in ACA acquisitions, use draft requests for proposals (DRFPs) whenever they offer a benefit. The DRFP must be posted on or linked to FedBizOpps. Acquisition regulations encourage early exchanges with industry about planned procurements. The purpose is to improve the understanding of Government requirements and industry capabilities. Potential offerors then have an opportunity to judge whether or how they can satisfy the requirements. Such exchanges also enhance our ability to obtain quality supplies and services at reasonable prices and increases efficiency in proposal preparation, evaluation, negotiation and contract award. Take particular care to ensure that source selection or proprietary data are not disclosed, including any potential offer's confidential business strategy.

- (f) Emphasize in the DRFP that a potential offeror may exchange information about its internal business practices or potential solutions to the Army on a confidential basis. Information offerors need to prepare their proposals, however, will be disclosed to all potential offerors at the earliest possible opportunity. When using techniques involving one-on-one communications, any contacts with potential offerors should include a representative from the contracting office.

## **Subpart 5115.3 -- Source Selection**

**5115.303 Responsibilities.** (b)(1) The source selection authority shall appoint the Source Selection Team (SST)/Evaluation Team (ET)/Proposal Evaluation Board (PEB) in writing.

### **5115.305 Proposal Evaluation**

(a)(2)(iii) Past performance evaluation. When evaluating past performance, the automated Past Performance Information Management System (PPIMS) should be used as one source of past performance information. The PPIMS system can be accessed via the internet at <https://apps.altess.army.mil/ppims/prod/>.

(c) Non-Government personnel. Appropriate Organizational Conflict of Interest (OCI) clauses shall be included in the contract through which non-Government personnel are provided.

**5115.306(c) Competitive Range.** Obtain legal review of competitive range determination before SSA approval.

## **Part 5116 Types of Contracts**

### **5116.404 Fixed-price contracts with award fees.**

Award fee provisions for fixed price contracts are defined in 5116.406-2.

### **5116.406-2 Cost-plus-award-fee contracts.**

(b)(2)(A) The award fee plan should contain at a minimum: identification of the roles and responsibilities of the award fee evaluation team, definition of each category of performance evaluated, definition of the standards used to grade the performance, the evaluation periods by date, the available award fee amount and a description of the general procedures for assessing the contractor's performance.

(b)(2)(B) "Rollover" is the process of moving unearned available award fee from one evaluation period to a subsequent evaluation period, thereby providing the contractor an additional opportunity to earn that previously unearned award-fee. In service contracts, the contract deliverable is the performance of a service and contractor performance is measurable at each evaluation period. For that reason, in service contracts, all evaluations are final and unearned award fee is not "rolled over" into subsequent evaluation periods. On other contracts, such as study, design or hardware, where the true quality of contractor performance cannot be measured until the end of the contract, the contract deliverable is an end item. Contractor performance leading up to delivery of the end item is an indication of whether and how well it will produce the end item, but it is not the end item itself. Thus, the use of an award fee "rollover" provision



in other than service contracts is permitted, but should be the exception rather than the rule. If “rollover” is used, the contractor may only earn a portion of the fee that was rolled over, even for subsequent excellent performance. Factors to consider in determining how much to reduce the available “rollover” fee include, how close the contractor came to meeting the scheduled milestone, in terms of cost, schedule and performance.

(b)(2)(C) If the Fee Determining Official approves the use of “rollover”, the official contract file must be documented accordingly and the contractor must be notified.

## **Subpart 5116.5 Indefinite-Delivery Contracts**

### **5116.505 -- Ordering.**

#### ***(b) Orders under multiple award contracts-***

#### ***(5) Task and Delivery Order Ombudsman.***

Each PARC will designate one or more Task and Delivery Order Ombudsmen who are responsible for reviewing complaints from contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders.

## **Part 5117 Special Contracting Methods**

### **5117.74 Undefinitized Contract Actions**

#### **5117.7403 Policy.**

(90)(a) PARCs will manage undefinitized contract actions to assure appropriate use and timely resolution.

(b) Prior to award, all UCAs must be reviewed by legal counsel.

#### **5117.704 Limitations**

##### **5117.7404-1 Authorization.**

(a) The Chief of the Contracting Office will forward a request for approval to award a letter contract or other type of undefinitized contract action to the PARC. The request must include a copy of all reviews. Provide a copy of the negotiated definitization schedule, and updated status on UCAs to the PARC as key events occur, but not less than monthly.



### **5117.7404-3 Definitization schedule.**

(b) If the Contracting Officer is unable to definitize within 180 calendar days after issuance of the action or of any extension authorized by the Contracting Officer, he/she shall submit a determination of a reasonable price or fee in accordance with FAR Subpart 15.4 and FAR Part 31, to the HCA for approval. This determination is subject to appeal as provided in the Disputes clause.

## **Part 5118 [Reserved]**

## **Part 5119 Small Business Programs**

**5119.202-1 -- Encouraging Small Business Participation In Acquisitions.** It is ACA's policy to provide maximum prime contracting opportunities for all types of small businesses. Therefore, the determination required by AFARS 5119.202-1(a)(1) that a consolidated requirement cannot be placed under one of the preference programs is retained by the Director, ACA, and is not delegated to the PARCs.

### **5119.505 Rejecting Small Business Administration Recommendations**

(iv) Discussion of the results of market research or attach a market research report.

### **5119.506 Withdrawing or modifying small business set-asides.**

(c) Withdrawal of a small business set-aside shall be accomplished on a DD Form 2579. The contracting officer will complete a DD Form 2579 to include a complete explanation, in block 14, to support the withdrawal decision. The contracting officer's signature in block 17e, withdraws the set-aside. The Small Business Specialist concurs with the action by his/her signature in block 18d.

### **5119.705-4 Reviewing the subcontracting plan.**

(d)(iv) The Contracting Officer shall incorporate the approved subcontracting plan into the contract by specific identification and may also include it as an attachment to the contract. When the subcontracting plan is incorporated into the contract by reference, send a copy to the Associate Director, Small Business and Disadvantaged Business Utilization Office.

### **5119.804-2**

(b) and (c) Contracting activities shall provide a copy of 8(a) Program offering letters to the Associate Director for the Office of Small and Disadvantaged Business Utilization Office concurrent with submission to the cognizant Small Business Administration District Office.

#### **5119.804-4 Repetitive Acquisitions.**

(a) The Contracting Officer must use the orders of precedence at FAR 8.002 and 8.003 and determine that the work must be placed with commercial sources before considering the use of the 8(a) program on each individual acquisition.

(91) When a contractor graduates from the SBA 8a program and the contracting officer desires to remove the work from the 8(a) program, the contracting officer must document the contract file regarding the firm's graduation. Then, the contracting officer must notify SBA stating that the requirement will not remain in the SBA program and it will be offered to the JWOD program or otherwise offered to another type of source.

## **Part 5133 Protests, Disputes, and Appeals**

### **Subpart 5133.1 – Protests**

#### **5133.102 – General.**

(a) Agency protests may be filed using any of the three ACA recognized protest forums. A contractor with an interest may protest to the contracting officer, protest to the PARC (or their designated representative) for independent review, or in the alternative, file an Executive Level Agency Protest (ELAP), where resolution is made at the HQ, ACA.

#### **5133.103-90 Annual Agency Bid Protest Report.**

(c) PARCs shall forward an annual report of bid protests to the ACA Operations and Career Management Directorate (SFCA-CO) and Office of Counsel HQ ACA (ATTN: SFCA-AC) for consolidation by October 15th each year.

#### **5133.103-91 ACA Executive-Level Agency Protest Program Procedures.**

(a) *Authority.* The executive-level agency protest procedures are established under the authority of FAR 33.103(d)(4), and AFARS 5133.102; E.O. 12979, and 60 Federal Regulation 55,171 (1995).

(b) *Introduction.* This subpart prescribes policy and procedures for an ACA ELAP, within the meaning of FAR 33.103. The Executive Level Agency Protest Program is a CONUS-only program intended to encourage interested parties to seek resolution of their concerns within ACA, rather than filing a protest with the Government Accountability Office (GAO) or other external forum. This ELAP program applies to Headquarters (HQ), ACA, to the ACA Southern and Northern Regions, to the Contracting Center of Excellence, to the Americas, ITEC4, and to all associated directorates of contracting and regional contracting centers. Unless otherwise stated, the procedures in this section apply to the HQ, ACA ELAP program only. This program



will only apply to ACA contracts to be awarded in CONUS. Other agency level protests will be processed in accordance with the currently existing applicable policies and regulations.

(c) *Policies and Procedures.*

(1) An ACA ELAP to an ACA forum is a "Protest To The Agency," within the meaning of FAR 33.103. Under this special ACA ELAP program, the protestor may file with either:

(i) The Contracting Officer designated in ACA AI clause 5152.233-9000, Army Contracting Agency Executive Level Agency Protest Program; or, directly with the

(ii) HQ, ACA Executive-Level Protest Decision Authority designated in ACA AI clause 5152.233-9000, Army Contracting Agency Executive Level Agency Protest Program, of the solicitation.

(2) *Interested Parties.* For the purpose of filing a HQ, ACA Executive-Level Agency Protest, an interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(3) *Election of Forum.* After an interested party protests an ACA procurement to HQ, ACA and while that ELAP is pending, the protester agrees not to file a protest with the GAO or other external forum. If a protest is filed with an external forum on the same solicitation as the HQ, ACA ELAP, the HQ, ACA ELAP will be dismissed.

(4) The ACA voluntarily agrees to stay performance of a contract when an interested party files a protest under the ELAP Program. Should the interested party disagree with the ACA's resolution of a protest under the ELAP program, it may utilize another protest forum without prejudice in accordance with FAR 33.103(d)(4).

(d) *Protest Decision Authority.* The ACA Chief Counsel is the HQ, ACA Executive-Level Agency Protest Decision Authority.

(e) *Time for Filing a Protest.*

(1)(i) An ACA ELAP shall be considered timely if filed before bid opening or the closing date for receipt of proposals when the protest is based on alleged apparent improprieties in a solicitation. A protest shall also be considered timely if filed within 10 calendar days after contract award, or filed within 5 calendar days after a debriefing date offered to the protester under a timely debriefing request in accordance with FAR 15.505 or FAR 15.506, whichever is later.

(ii) *ELAPs Filed Directly with HQ ACA.* To be considered timely filed, the protest must be received at the HQ ACA offices by 4:30 pm, Eastern Time on the last day on

which such filing may be made. The address for HQ ACA is included in ACA AI clause 5152.233-90 Army Contracting Agency Executive-Level Agency Protest Program.

(iii) *ELAPs Filed Directly with the Contracting Officer.* To be considered timely filed, the protest must be received at the local contracting office designated in the solicitation by the close of business time designated in the solicitation on the last day on which such filing may be made. The address for the Contracting Officer is included in ACA FAR AI clause 5152.233-90 (Army Contracting Agency Executive-Level Agency Protest Program). The Contracting Officer shall immediately forward the protest to the HQ ACA.

(f) *Form of Protest.* An ACA ELAP protest must include the protester's name, address and telephone number, including fax number; the solicitation or contract number, identity of the contracting activity and the contracting officer's name; a detailed statement of all legal and factual grounds for protest (mere disagreement with the decisions of contracting officers does not constitute grounds for protest), including copies of all relevant documents; a request for a ruling; and, a request for relief. An authorized representative of the protester must sign all protests. The protest must specifically state the intent to file under this special ACA ELAP program. Otherwise, it will be processed under the normal agency protest procedures.

(g) *Processing of ACA ELAPs.* Within 10 working days after the protest is filed, the Contracting Officer, with the assistance of local legal counsel, shall file with the HQ, ACA Office of Counsel, ATTN: ACA SFCA-AC, one copy of an administrative report responsive to the protest and a detailed memorandum of law addressing the issues in the protest. Reports and memos shall be sent by facsimile, email, over night mail or hand-delivered, to ensure timely receipt. The ACA ELAP Decision Authority will issue a written decision within 20 working days after the filing of the protest. The written decision will be binding on the Army Contracting Agency and its contracting activities. For good cause shown, the ACA ELAP Decision Authority may grant extensions of time for filing the administrative report and for the issuance of the written decision. When such an extension is granted, the protester and all interested parties shall be notified within 1 working day of the decision to grant the extension. The Protest Decision Authority shall make his/her best effort to decide the ELAP within 35 calendar days of filing. (FAR 33.103(g))

(h) *Effect of Protest on Award and Performance.*

(1) *Protests before award:* When an ELAP is filed prior to award, a contract may not be awarded unless authorized by the HQ, ACA Special Competition Advocate (SCA) in accordance with FAR 33.103(f)(1) and (2).

(2) *Protests after award:* When an ELAP is filed within 10 calendar days after award, or within five calendar days of debriefing for any debriefing that when requested was required by FAR 15.505(a) or 15.506(a), whichever is later, the Contracting Officer immediately shall suspend performance.



(i) *Protocol and Criteria for Overrides.*

(1) All timely ELAPs will automatically trigger a Voluntary Agency Stay of award or performance. This Voluntary Agency Stay is similar to the Competition In Contracting Act, (CICA), automatic stay found in Title 31 U.S.C. § 3553(c)(d); 4 C.F.R. § 21.6 (2000); FAR 33.104(b)(c); AFARS 5133.104(b)(c). In all cases where an ELAP is timely, the contracting officer must inform all interested parties of the automatic stay. If appropriate, the contracting officer will obtain extensions of bid/proposal acceptance times from the offerors. If the contracting officer cannot obtain extensions, he/she should request that HQ, ACA consider an override of the stay in accordance with FAR 33.103(f)(1).

(2) The HQ, ACA Special Competition Advocate may authorize contract performance, notwithstanding the protest, upon a written finding that:

(i) Contract performance will be in the best interests of the United States;  
or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision from the HQ, ACA Protest Decision Authority. Generally, override decision are not subject to judicial review.

(j) *Remedies.* The ELAP Protest Decision Authority may grant or direct any one or combination of the following remedies:

- (1) Terminate the contract;
- (2) Recompete the requirement;
- (3) Issue a new solicitation;
- (4) Refrain from exercising options under the contract;
- (5) Award a contract consistent with statute and regulation;
- (6) Pay appropriate costs (see FAR 33.102(B)(2)); or
- (7) Such other remedies as ELAP Protest Decision Authority determines necessary to correct a defect.

(k) *Service of Protest for ACA Procurement:* Protests under the HQ, ACA ELAP Program shall be filed at: HQ, Army Contracting Agency, Chief Counsel ATTN: SFCA-AC, 5109 Leesburg Pike, Suite 301, Falls Church, VA 22041-3201. Protests to Contracting Officer under the ELAP program shall be filed at the address specified in the solicitation.

(l) *Discovery*. To the extent permitted by law and regulation, the agency and the protester may exchange information relevant to the protest. FAR 33.103(g).

(m) *Solicitation Provision*. Insert the provision at ACA AI 5152.233-9000 in all solicitations that are eligible for use of the ACA ELAP procedures.

#### **5133.104 -- Protests to GAO.**

(a)(2) (a) PARCs will manage protest actions for the ACA. Upon receipt of a notice of protest, a copy of the protest and a synopsis of the protest action shall be immediately furnished electronically to the ACA Operations and Career Management Directorate (ATTN: SFCA-CO) and the ACA Office of Counsel (ATTN: SFCA-AC). Upon resolution of the protest, furnish a synopsis of the protest action and notice of resolution, with a copy of the decision or settlement agreement, to the ACA Operations and Career Management Directorate (ATTN: SFCA-CO) as soon as possible.

(b) The protest summary must include the solicitation number, the title of the contract action, a point of contact in the DOC, a point of contact in the local legal office, an indication of whether an override will be sought, and a brief description of the protest grounds.

(b) *Protests before award*. Determinations and Findings supporting protest overrides must be processed through the Operations and Career Management Directorate (SFCA-CO).

(c) *Protests after award*. Determinations and Findings supporting protest overrides must be processed through the Operations and Career Management Directorate (SFCA-CO). Use the format specified at paragraph (c)(1)(A) of this subpart.

##### **(1)(A) Contents of the Determination and Finding**

(i) Clearly state the urgent and compelling circumstances that significantly affect the interests of the United States and describe why those circumstances do not support waiting for the Comptroller General to determine the merits of the protest. Expiration of the incumbent's contract is not a good enough reason by itself. Describe why the incumbent's contract cannot or should not be extended to provide coverage as the protest is processed. Include an analysis of why extending the incumbent's contract is not in the best interests of the United States. Also include an analysis of why continued performance of the requirement is in the best interest of the United States.

(ii) Describe why an immediate award is essential. Consider the contractor's special or technical skills, savings over the incumbent contract, the scope of the new acquisition and any other characteristics that would make award to the prospective contractor in the Government's best interests.

(iii) Describe the costs and other damage the Army will incur if the protest is sustained after override of the protest and award of the contract to other than the incumbent.



(iv) Discuss how likely it is that the protestor will prevail. Discuss the protest allegations and the merits of the Army's case.

(v) The D&F must be tailored to reflect the circumstances of the instant acquisition, as each protest is judged on its own merits. The findings must be supported by the circumstances of the instant acquisition.

**5133.212-904(a)(2)** All appeals filed under the Disputes Clause must be reviewed at a level higher than the contracting officer.

## **Part 5134 Major System Acquisition [Reserved]**

## **Part 5135 Research and Development Contracting [Reserved]**

## **Part 5136 Construction and Architect-Engineer Contracts [Reserved]**

## **Part 5137 Service Contracting**

### **Subpart 5137.1 Service Contracts—General**

#### **Subpart 5137.103 Contracting Officer Responsibility.**

#### **5137.104-90-1 – Contracts Requiring Authorization at the Secretarial level.**

(a)(iv)(90) All new requirements for the acquisition of contracted services, as well as the exercise of options on existing contracts for services shall be justified and approved by the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA (ALT)) in advance, in writing prior to execution of any service requirement. The Request for Services Contract Approval Form in Part 5153.9011 shall be submitted to the SFCA-CO point of contact with a copy to the Director, SFCA-CO. The request will be reviewed by the appropriate headquarters staff members for recommendation for ACA approval/disapproval and forwarding to ASA (ALT) for final approval/disapproval.

#### **Subpart 5137.104 -- Personal Services Contracts.**

#### **5137.104-90-2 -- Contracts for Expert, Consultant and Stenographic Reporting Services Covered by a Delegation of Authority.**

##### **(c)(2) Stenographic Reporting Services.**

Chiefs of Contracting Offices are authorized to approve contracts for stenographic reporting services for hearings in connection with agency Merit System Protection Board appeals and grievances, processing employee complaints of discrimination under the equal opportunity program, and other administrative hearings for which verbatim records are required, either by regulation or by order of the administrative board's appointing authority.

## **Subpart 5137.2 Advisory and Assistance Services**

### **5137.204 Guidelines for Determining Availability of Personnel**

Each PARC shall appoint a Contract Advisory and Assistance Services (CAAS) contract point of contact and provide their name to SFCA-CO.

### **5137.4 Review Procedures**

(a) All service acquisitions, excluding military construction services with a total planned value of \$500M or above shall be forwarded simultaneously to both SFCA-CO and the Directorate for Executive Agency functions for review and approval. Both Directorates will review the strategy at the same time to expedite the process.

### **Subpart 5137.5-5 Army Service Strategy Panel (ASSP)**

#### **(a) General requirements**

(1) (i) DASA (P&P) approval: All service acquisitions \$500M or more and service acquisitions identified by the ASA(ALT) as special interest shall be approved by the Director, Deputy Assistant Secretary of the Army (Policy and Procurement). The acquisition strategy and supporting documentation shall be submitted to both SFCA-CO and the Directorate of Executive Agency functions. At a minimum, the supporting documentation will include:

- i. DD Form 2579
- ii. Performance Work Statement
- iii. Performance Requirements Summary
- iv. Market Research Report
- v. J&A (sole source)
- vi. Quality Assurance Surveillance Plan
- vii. Award Fee Plan
- viii. D&F (for bundled and consolidated requirements)
- ix. Cost Benefit Analysis (for bundled and consolidated requirements)
- x. Briefing slides



(ii) HCA concurrence and approval is required before the proposed strategy is staffed to DASA (P&P) for approval. HCA ASSP procedures require a briefing prior to approval. It is also strongly recommended that concurrence from the Army, Small Business Director is obtained before scheduling the HCA level briefing.

(iii) After approval of the proposed strategy from both the HCA and Army Small Business Director, a briefing is scheduled with the participants delineated in AFARS 5137.5(d).

(2) HCA approval: All ASSP approval requests over \$100M or more and less than \$500M must be approved by the Director, ACA. Submit the request, acquisition strategy and supporting documentation through the PARC to SFCA-CO). See "sample acquisition strategies" on the HQ ACA web page located at: <http://aca.saalt.army.mil/aca/Community/StratPng.html>. Supporting documentation may vary with the acquisition approach anticipated, but at a minimum should contain the following:

- i. DD Form 2579
- ii. Performance Work Statement
- iii. Performance Requirements Summary
- iv. Market Research Report
- v. J&A (sole source)
- vi. Quality Assurance Surveillance Plan
- vii. Award Fee Plan
- viii. D&F (for bundled and consolidated requirements)
- ix. Cost Benefit Analysis (for bundled and consolidated requirements)
- x. Briefing slides

(b) The ACA ASSP process provides the Director, ACA, an overall understanding of the proposed strategy and the important issues critical to the decision-making process. The approach employed must address the associated risks and quantifiable metrics to ensure program success. The Operations and Career Management Directorate will serve as the coordinator for all ASSPS conducted at the Headquarters, Army Contracting Agency level.

(c) ASSP Chairperson

(1) All HQ ACA ASSPs will be chaired by the Director, ACA.

(d) The ACA ASSP membership will be tailored to the requirements of each acquisition. However, at a minimum membership will include: the Director ACA, Director of Operations and Career Management, Competition Advocate, legal counsel, and Director of Small Business.

- (e) ASSP Minutes and Acquisition Strategy Approval. At the conclusion of the ASSP briefing, any outstanding issues or areas of key concern will be addressed by a specific date with approval predicated upon these changes. All issues shall be resolved to the satisfaction of the Director, ACA prior to approval of the acquisition strategy. ASSP minutes of the briefing will be prepared by the HQ ACA coordinator and disseminated within seven (7) working days to all participants.
- (f) Timelines:
- (1) HQ ACA requires ten (10) working days to review the acquisition strategy and provide comments and recommended improvements to the PARC Office. The PARC's Office is required to submit a revised acquisition strategy along with a summary or response to the required changes by a specific date. Upon resolution of the comments and HQ ACA's receipt of an overall good quality acquisition strategy, HQ ACA will request the PARC's Office submit briefing slides for review. Review of the briefing slides is necessary to ensure consistency with the acquisition strategy. Upon receipt of the briefing slides, the cognizant HQ ACA Procurement Analyst will schedule the HQ ACA ASSP briefing and send an email announcing the ASSP date, time, and location to all expected participants with the revised acquisition strategy and briefing slides attached.,
- (2) ACA level ASSPs are usually scheduled for 90 minutes and shall cover the background, key areas and issues of concern. Generally, the Contracting Officer presents the briefing to the ASSP participants. See the "sample" template for briefing slides on the HQ ACA web page located at: <http://aca.saalt.army.mi/aca.index.htm>. The briefing can be conducted either via videoteleconference or on-site at headquarters, ACA. If corrective actions are necessary, a revised acquisition strategy is required prior to approval.

#### Subpart 5137.5-6 – Acquisition Strategy Content

- (a) The acquisition strategy content will address the areas identified in AFARS 5137.5-6 and the following:
- (1)(a) Will the requirement be satisfied through the use of a non-DOD contract? If so, indicate whether appropriate approval has been obtained (see DFARS 237.170-2(b)).
- b. Include a discussion of the procurement history.
- c. Address challenges that drive the mission or acquisition approach.
- d. Indicate if there is any Congressional interest in the requirement.



- (2)(a) Describe the nature and extent of the market research that was conducted.
- (3)( a) If this is a bundled requirement, include the benefit analysis as prescribed in the DOD Benefit Analysis Guidebook located at [www.acq.OSD.mil/sadbu/news/guidebook.htm](http://www.acq.OSD.mil/sadbu/news/guidebook.htm). Obtain legal review by the PARC Counsel.
  - (b) Indicate whether the SBA PCR concurred on the DD Form 2579.
  - (c) Include a discussion of subcontracting potential and goals.
- (5)(a) Include the estimated dollar value of the procurement.
  - b. Address whether funding is available and the type of funds that will be used.
  - c. Address the contract type and the basis for selection. If award fee contract type is used include a discussion of the award fee plan, related criteria and evaluation process to include how attainment of the metrics will be incorporated in the award fee evaluation.
  - d. Include a discussion of the source selection process—whether it will be formal or informal, proposed evaluation criteria and the basis for award. If a formal source selection process will be used, do not identify the name of the SSA in briefings or meetings where non-Government personnel are present.
  - e. Discuss any waivers or deviations that will be required.
  - f. Discuss contract administration to include the involvement of the COR, DCMA and the surveillance plan.
  - g. Include a milestone schedule which contains key points up to time of award.

#### Subpart 5137.5-7 –Data Collection and Reporting

##### (d) Contractor Manpower Data Reporting (CMR).

- (1) All requirements for acquiring contracted services shall include in newly issued contracts, task orders and bi-laterally modified contracts, the requirement for Contractor

Manpower Reporting (CMR) to the secure web site at <https://contractormanpower.army.pentagon.mil>. This shall occur upon award or modification, and annually thereafter for the duration of the contract.

(2) All requiring activities shall ensure that the requirement for CMR data reporting is a deliverable within each solicitation, contract and contract modification issued on or after March 8, 2005, and provide resources associated with the collection and reporting of this data; as well as the Unit Identification Code (UIC) of the Army requiring activity to the Contracting Officer for inclusion in a contract line item number (clin) to allow for pricing for this reporting requirement. The requiring activity shall also monitor and assist the contractor to ensure the complete reporting takes place no later than October 31 each year and assist the contractor in identifying the fund cite on the contract. Inputting of information into the CMR system may also be the responsibility of the requiring activity, in lieu of the contractor.

(3) The Contracting Officer shall ensure that the need for CMR data reporting is a deliverable within each solicitation, contract and contract modification issued on or after March 8, 2005; (2) ensure that UIC for the Army requiring activity is included as part of a CLIN of each service contract; (3) ensure that the data collection costs charged by the contractor are reasonable; (4) include the requirement to monitor the contractor's reporting of required information in the COR appointment letter; and, (5) verify the status of reporting by the contractors within the CMR system.

#### Subpart 5137.94 – Security Clearances and Identification for Contractor Personnel

(90) Contractor employees shall not sign any memoranda or other documents which in any way imply that they are making a decision on behalf of the Government.

### **Part 5138 Federal Supply Schedule Contracting [Reserved]**

### **Part 5139 Acquisition of Information Technology [Reserved]**

### **Part 5140 [Reserved]**

### **Part 5141 Acquisition of Utility Services [Reserved]**

### **Part 5142 Contract Administration and Audit Services**

#### **Subpart 5142.15 Contractor Performance Information**

(90) Past Performance Information Management System (PPIMS)



(a) Administrators. The HCA-designated primary and alternate points of contact (AFARS 5142.1503-90(f)(2)) are maintained in the "Points of Contact" listing on the PPIMS web site, accessible from <http://aca.saalt.army.mil/>.

(b) The HCA designated POC shall approve PPIMS Administrators or POCs appointed by each Regional PARC Office. The Regional PARC POCs will also be listed in the "Points of Contact" listing on the aforementioned web site. The Regional PARC POC shall execute the responsibilities provided under AFARS 5142.1503-90(f)(2).

(c) The Regional PARC POCs will in turn, approve PPIMS Administrators or POCs appointed by Contracting Centers and DOCs, who will also execute the aforementioned responsibilities. However, the approval of applications for User Ids and Passwords may be limited to the Regional PARC POCs or allowed in any manner determined by the Regional PARC.

(d) The Contracting Center's and DOC's designated POCs shall provide their name, e-mail address and telephone number to the PARC's PPIMS POC, and in turn, provided to HQ ACA Primary Designated Command POC/Administrator and updated appropriately.

(e) Access to PPIMS is password controlled. To apply, go to the Army website at: <https://apps.altess.army.mil/ppims/prod/ppimshp.cfm>. Register under the first time user (production database) and after completion of application, e-mail or phone the administrator for User ID and Password approval.

(f) Assessing Official. The Contracting Officer is the assessing official.

(g) Resolution Authority. The Chief of the Contracting Office is the resolution authority.

(h) Regional PARCs shall ensure that PPIMS POCs effectively monitor the execution of Performance Assessment Reports (PARs) for the categories listed below and effect appropriate actions as necessary:

- 1) Number of PARs due in 30 days
- 2) Number of PARs overdue by 59 days or less
- 3) Number of PARs overdue by 60 days
- 4) Number of PARs pending KO approval
- 5) Number of in process PARs
- 6) Number of completed PARs

(i) Training: Regional PARCs are encouraged to facilitate the following training methods:

- 1) Agency abbreviated PPIMS Procedure Guide. At a minimum, the guide should clearly identify the particularities that will facilitated the effective use of PPIMS, establish clear lines of communications in obtaining "User Ids" and "Passwords", and promote the importance of continuous communications between POCs

2) Video-conference (VTC). It is encouraged to conduct quarterly VTCs to discuss PAR status, updates and Initiatives involving PPIMS and issues that are raised or suggested by POCs.

**Part 5143 Contract Modifications [Reserved]**

**Part 5144 Subcontracting Policies and Procedures [Reserved]**

**Part 5145 Government Property [Reserved]**

**Part 5146 Quality Assurance [Reserved]**

**Part 5147 Transportation [Reserved]**

**Part 5148 Value Engineering [Reserved]**

**Part 5149 Termination of Contracts**

**Subpart 5149.70 Special Termination Requirements**

**5149.7001 Congressional Notification on Significant Contract Terminations:** Submit notices through the HCA, Operations and Career Management Directorate, (ATTN: SFCA-CO) with an electronic informational copy to the Regional/Command PARC Office.

**5149.7003 Notification of Anticipated Contract Terminations or Reductions.**

(b) Submit notices through SFCA-CO to the HCA with an electronic informational copy to the Regional/Command PARC Office.

**Part 5150 Extraordinary Contractual Actions [Reserved]**

**Part 5151 Use of Government Sources by Contractors [Reserved]**

**Part 5152 Solicitation Provisions and Contract Clauses**

**5152.233-90 Army Contracting Agency Executive Level Agency Protest Program.** Insert this provision in solicitations as prescribed at 5133.103-91(m).

**5152.233-9000 Army Contracting Agency Executive Level Agency Protest Program. (NOV 2005)**



(a) This solicitation is eligible for the HQ, Army Contracting Agency (ACA) Executive-Level Agency Protest (ELAP) program, as an alternative to the usual provisions applicable for Agency protests under FAR 33.103. An ELAP is a "PROTEST TO THE AGENCY," within the meaning of FAR 33.103. The ELAP Program is intended to encourage interested parties to seek resolution of their concerns within ACA, rather than filing a protest with the Government Accountability Office (GAO) or other external forum. After an interested party files an ELAP on an ACA procurement to HQ, ACA and while that protest is pending, the protester agrees not to file a protest with the GAO or other external forum. If a protest is filed with an external forum on the same solicitation as the ACA ELAP, the ACA, ELAP will be dismissed.

(b) An interested party may file a written protest to the Agency under the Executive-Level Agency Protest program for contract solicitations arising and performed within the continental United States. Such ELAPs are limited to objections to any of the following:

- (1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.
- (2) The cancellation of the solicitation or other request.
- (3) An award or proposed award of the contract.
- (4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(c) *Voluntary Automatic Stay.* This clause describes the circumstances under which the ACA voluntarily agrees to stay performance of a contract in consideration of a decision by an interested party to file an ACA ELAP, as permitted by FAR 33.103(f)(4).

(1) In a standard post-award agency protest, the agency must not proceed with contract performance, pending resolution of the protest. This is known as an "automatic stay" and it mirrors the stay required under a timely post-award protest to the Government Accountability Office (GAO) under 31 U.S. Code 3553(c) and FAR 33.104(c) (a "Competition in Contracting Act (CICA) Stay"). However, if the agency determines that performance must proceed, based upon the criteria set forth in FAR 33.103(f)(1), the automatic stay may be overridden. This is known as an automatic stay "override."

(2) The CICA stay applies only if the GAO protest is filed within 10 calendar days from notice of award, or within 5 calendar days of a required debriefing. A firm may file an agency protest and, if it is dissatisfied with the agency's protest decision, may wish to file a follow-on GAO protest. Under normal circumstances, a protester that goes to the GAO after receiving an adverse agency decision will find that the GAO may take jurisdiction and actually render a recommendation, but that the CICA Stay no longer applies.

(3) ACA voluntarily agrees to stay performance of a contract when an interested party files a timely protest under the ELAP Program. Should the interested party disagree with the ACA's resolution of an ELAP, it may utilize another protest forum without prejudice. The ELAP Voluntary Automatic Stay extends the protester's right to preserve the status quo pending resolution of all protests with respect to a particular contract action. In return for the protester's initially filing its protest as an ELAP instead of with the GAO, the contracting officer agrees that, if the protester ultimately disagrees with the ELAP decision and files a GAO protest, the agency will agree not to proceed with performance just as it would have done if the protester had filed its protest with the GAO right from the start. This means that in an ELAP, the agency may override the stay under the same standards and circumstances as would have applied if the protest had originally been filed with the GAO. Nothing in this clause adversely affects an interested party's rights to protest a contract action to the GAO, or to seek other relief related to the action.

(d) An ELAP protest may be filed with the Contracting Officer designated in paragraph (g) of this clause for resolution of protests, or, with the ACA Chief Counsel at HQ, ACA at, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201.

(e) For the purpose of filing an ELAP, an interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. The ACA Chief Counsel is the ELAP Protest Decision Authority.

(f) An ELAP must include the protester's name, address and telephone number, including fax number; the solicitation or contract number, identity of the contracting activity and the contracting officer's name; a detailed statement of all legal and factual grounds for protest (mere disagreement with the decisions of contracting officers does not constitute grounds for protest), including copies of all relevant documents; a request for a ruling; and, a request for relief. All protests must be signed by an authorized representative of the protester and must state it is an ACA ELAP..

(g) ELAPs, as defined in FAR 33.101, may be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from \_\_\_\_\_. *[Contracting Officer designates the official or location where a protest may be served on the Contracting Officer.]*

## Part 5153 Forms

### 5153.9010 – Congressional Notification Format.

#### **CONGRESSIONAL NOTIFICATION**

**(IAW DFARS 205.303 and AFARS 2105.303)**

SUBMIT TO: Headquarters, U.S. Army Contracting Agency – ATTN: SFCA-IT  
E-MAIL: [CONG.NOTIF@HODA.ARMY.MIL](mailto:CONG.NOTIF@HODA.ARMY.MIL) OR FAX # (703) 681-9304 OR DSN 761-9304  
SFCA-IT POC (703) 681-9782/9783

SERIAL No.



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(5:00 P.M., WASH, D.C. Time)

\_\_\_\_\_

\$

<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
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: \$

## CONTRACT WITH OPTIONS

\$

(No options will be exercised)

\$

TOTAL IF ALL OPTIONS

\$

YES	NO
-----	----

NO

\$

YES

NO
----

TOTAL ALL INCREMENTS  
(estimate)

\$ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(complete appropriation, FY, type of funds & amount)

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ITEM (QTY) OR SERVICE PROCURED (One or two lines in complete sentences):

\_\_\_\_\_

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FOREIGN MILITARY

YES	NO
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PERFORMANCE LOCATION(S), CITY STATE AND ZIP CODE WITH PERCENTAGES AND DOLLAR AMOUNT:

\$

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[illegible][illegible]

PHONE NUMBER:

\_\_\_\_\_

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SECONDARY POC:  PHONE NUMBER:

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